

UNITED STATES DISTRICT COURT
District of Massachusetts

Case No: 04-10023-GAO

SUBENKO

vs.

SPENCER

PETITIONER'S SUBMISSION OF SUPPLEMENT EXHIBIT
IN FURTHER SUPPORT OF RULE 60(a) MOTION

NOW COMES the Petitioner in the above-numbered case to hereby submit further support for his Motion filed pursuant to Rule 60(a) and is now pending before this Court.

As indicated on page 3 attached to the Rule 60(a) Motion before the Court, the docket entry discloses that on January 19, 1999, the Petitioner lodged a sentence appeal in the state Court designated entry #35 AND the state court then gave notice to the "Appellate Division" and others on February 4, 1999 -- designated entry #37.

Attached hereto is an UPDATED computerized case summary docket sheet that includes the omissions within the docket sheet filed in this Honorable Court by the Respondents. Omissions that without doubt "turn the time table on its head" and disclose **due but uneducated dilligence at its finest**. By accepting the advice, assistance, and some times "off the wall" tac-tics employed by even the most insane sources, this Petitioper has done what every United States Court has asked for... he acted, he risked being frowned upon by officials & the court, he chased the Justice he

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knew existed but could not speak for himself, and that is by all means the definition of due dilligence.

As a direct result of these actions this Petitioner has clearly met the obligations of the AEDPA of 1996. The attached case summary discloses, indisputably, that the sentence appeal he filed for in 1999 was decided on May 17, 2004, by the Appellate Division, and docketed the ORDER on July 23, 2004 -- designated entry #59 on the up to date docket summary attached hereto. And, within that sentence appeal was Petitioner's CLAIM to the lack of a competency determination, as is also a part of his federal CLAIM before this Honorable Court. The AEDPA of 1996 merely requires that the CLAIM you seek to address be pending for relief in order to toll the one year statute of limitation for filing. This is the situation here.

WHEREFORE, in light of the omission that caused an oversight protecting the Petitioner's right established under the AEDPA Act, this Honorable Court should reverse the decision to dismiss this action and allow it to move forward by this day correcting the error that caused the unjust decision.

Date: 3/28/05

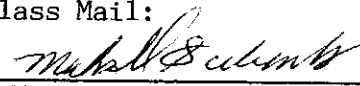
Respectfully Submitted,


Michael Subenko, pro se,
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Shirley, Mass 01464

CERTIFICATE OF SERVICE

I certify that on this day I did mail
a true copy of this document to the Atty.
Gen. Office via 1st Class Mail:

3/28/05
Date


Michael Subenko